

APPENDIX IV

DOCUMENTS PERTINENT TO ARCHAEOLOGICAL PLANNING

- 1) Formletter regarding
Archaeology in EIRs,
State Resources Agency
- 2) Extract from Decision:
Brown et al vs. Department
of General Services et al
- 3) Summary of Recommended
Procedures for Archaeolo-
gical Impact Evaluation,
Society for California
Archaeology
- 4) Comments on EIR Review
Program, City of San Jose,
by C. D. King, Bay Area
Archaeological Cooperative

Norman B. Livermore, Jr.
Secretary

Office of the Secretary
Resources Building
1416 Ninth Street
Sacramento, CA 95814

THE RESOURCES AGENCY OF CALIFORNIA
Sacramento, California

(received) April 3, 1973

Dr. Michael J. Moratto
Department of Anthropology
California State University
San Francisco, CA 94132

TO WHOM IT MAY CONCERN:

Thank you for your letter regarding the Guidelines for Implementation of the California Environmental Quality Act and the inclusion of archaeological concerns in environmental impact reports.

We believe that archaeological and historical resources are important considerations in the environment. Our preliminary draft of the Guidelines included archaeological considerations among the examples of effects to be considered in determining whether a particular project may have a significant effect on the environment. In an effort to simplify the Guidelines, we reduced the number of examples of potential significant effects, but we added policy statements from the Environmental Quality Act which make it clear that historical and archaeological considerations are included. We invite your attention to Section 15011 of the Guidelines where this provision is included.

We would appreciate your assistance in determining how well the Guidelines work in practice. The Resources Agency may issue modifications to the Guidelines in August 1973 based on comments and criticisms received. We have requested that people interested in submitting suggestions for modification should do so not later than July 15, 1973. Suggestions that reduce rather than increase the volume and complexity of the Guidelines will be given preference.

Thank you for your interest.

Sincerely,

(Signed) Norman B. Livermore Jr.
Secretary for Resources

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA IN AND
FOR THE COUNTY OF SACRAMENTO, #236723

Edmund G. Brown, Jr., Secretary of State; Wayne Red-Horse; Marie Potts,
PLAINTIFFS

vs.

Department of General Services; Office of Architecture and Construction;
Department of Parks and Recreation; Ronald Reagan, Governor,
DEFENDANTS

IT IS THE ORDER OF THIS COURT that the request of plaintiffs and
Complainants in the intervention for a preliminary injunction to enjoin
the work directed under Chapter 103, Statutes of 1973, is hereby DENIED,
and that no environmental impact report shall be required for the collec-
tion of the archaeological information, research and resource evaluation
activities incidental to the preparation of an environmental impact re-
port for the proposed Governor's mansion at the Carmichael site.

While the environmental impact report on the mansion project may be
required, there is nothing before this court to indicate that construc-
tion of the Governor's mansion will commence without the State, through
its authorized representatives, having completed such a report. It would
appear that no intelligent evaluation of the historical significance of
the mansion site could possibly be made without including therein the
information to be obtained from the work directed by Chapter 103, Statutes
of 1973, and any environmental impact report prepared without such infor-
mation would be seriously deficient.

Therefore, the Court deems a request for the completion of such an
environmental impact report on the mansion project prior to the archaeo-
logical work directed by the legislature premature pending basic data
collecting, research and resource evaluation and such further informa-
tion gathering activities which may be preliminary and incidental to
the preparation of such a report, and, therefore

IT IS THE ORDER OF THIS COURT that the request for a preliminary
injunction at this time be and the same is hereby DENIED.

DATED: Jul 31, 1973

(Signed) Lloyd A. Phillips, Jr.
PRESIDING JUDGE OF THE SUPERIOR COURT

SUMMARY:

RECOMMENDED PROCEDURES FOR PREPARATION OF ARCHAEOLOGICAL IMPACT EVALUATIONS, SOCIETY FOR CALIFORNIA ARCHAEOLOGY

The Executive Committee of the Society for California Archaeology has authorized publication of a brochure providing recommendations for the preparation and review of environmental impact reports pertinent to archaeological resources (King et al 1973). The following is a summary of the elements that are recommended by the Society for consideration in archaeological impact evaluations.

- A. LOCATION AND NATURE OF THE PROJECT, including maps showing areas of direct and indirect impact, and areas surveyed. Maps showing actual archaeological site locations should often be kept confidential to avoid damage to the sites.
- B. STATEMENT OF THE BASIS FOR OBSERVATIONS: The methods used to obtain data should be described, including both documentary research and fieldwork.
- C. RESOURCES SUBJECT TO DIRECT IMPACT: A description of all archaeological resources directly endangered by project-related activities.
- D. RESOURCES SUBJECT TO INDIRECT IMPACT: A description of all resources thought to be subject to possible impacts as an indirect function of the project - for example, by further growth catalyzed by the project, by vandalism permitted by new access provided by the project, etc.
- E. SIGNIFICANCE OF THE RESOURCES: A statement of the value of the resources described in terms of their general scientific importance, their local value, their interpretive value, and their cultural significance.
- F. LEGAL STATUS OF THE RESOURCES: A consideration of the relationship of the resources to such federal laws as the Historic Sites Preservation Act, state and federal antiquities and cemetery laws, and any local ordinances that may apply.
- G. MITIGATION OF DIRECT AND INDIRECT IMPACTS: Recommended ways, including alternatives if possible, that any resources subject to direct or indirect impact can be preserved without halting the project altogether. Redesign of the project to avoid impacts, burial of sites under non-destructive fill, and salvage excavations are examples of mitigation measures.
- H. POSITIVE IMPACTS: An exploration of the ways, if any, in which the project may have a positive impact on the archaeological environment, for example, by preserving sites that are currently being vandalized, by including public-interpretive facilities in the project design, etc.

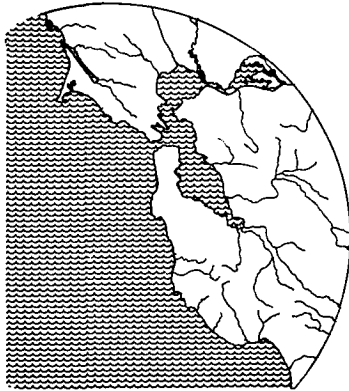
- I. QUALIFICATIONS OF THE EVALUATOR: A statement (if not already on file with the recipient agency) of the archaeological evaluator's qualifications for conducting the study. Experience in EIR archaeology, affiliation with a responsible institution, expertise in local archaeology, professional degree, and publications in archaeology and anthropology are recommended as general criteria for judging an evaluator's competence.

COMMENTS ON EIR REVIEW PROGRAM,
CITY OF SAN JOSE, BY C. D. KING

EDITORIAL NOTE

As noted in Chapter VII, it is entirely possible, though of questionable legal merit, for local agencies to regard mere submission of an Environmental Impact Report, together with comments from the public, as sufficient fulfillment of the provisions of the California Environmental Quality Act, without attending to the sufficiency of the observations contained in the EIR. Naturally, such a policy tends to militate against effective planning by the responsible agency. In the case of archaeology, it may result in submission of EIRs that merely allude vaguely to the possibility of archaeological impact without specifying where or how such impacts may occur; if no supplemental data are required of the applicant, the planning agency has no solid basis for placing mitigating conditions on the applicant's permit if granted, and is left with the choice of allowing the project to go forward without mitigation provisions or of refusing the permit on the basis of vague, undocumented assertions.

The following letter by Chester D. King describes a case in which, on a large project adjacent to the San Felipe study area, a policy like the one outlined above was apparently followed by the agency responsible for requiring and reviewing the EIR. Mr. King's comments are not meant to impugn the integrity or intentions of any of the parties involved, but to provide a tangible example of an approach to environmental planning that decidedly fails to properly provide for archaeological resource management.



**BAY
AREA
ARCHAEOLOGICAL
COOPERATIVE**

1089 Broadway
San Jose, CA 95125
August 28, 1973

Tom King
830 Dexter Street
Santa Rosa, CA 95404

Dear Tom,

I have taken on the responsibility of reviewing a number of Environmental Impact Reports as a local archaeologist for the Society for California Archaeology. This letter discusses the failure of the present review system to insure that EIRs contain objective information upon which intelligent decisions can be made regarding archaeological resources. I shall use an EIR prepared for a proposed development called the Lake Anderson Development as an example.

The Lake Anderson Development impact report which I was sent for review stated that no significant sites or surface indications had been reported or observed during the study. The report also said that archaeological materials were noted in a number of areas of the proposed project. The report neglected to say what the criteria were for judging significance of sites, who applied these criteria, or whether the lack of observation of significant sites was due to a failure to see them or look for them. I wrote a critique of the archaeological element of the report and on May 20th sent copies to the San Jose City Planners Office, URS Research Company, which wrote most of the EIR, and Oceanic California Inc., the developers who had proposed the Lake Anderson Development.

I was called by Mr. Philip Morris of URS who directed the preparation of the EIR, and he invited me over to discuss my comments and the EIR. I went to URS Research Company and met with Mr. Morris and Tom Williams, a University of California, Berkeley student in paleontology who had done the archaeological element of the report. While there, they

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informed me that the developer had gone over the report with them and had weakened the wording of the proposed mitigation measures.

At the report's first public hearing in June before the Planning Commission, it was decided that since a number of agencies had not submitted their reviews of the report the Commission would make no decision on accepting the report as complete, and informal testimony was taken.

At the next hearing before the Planning Commission on July 15th, I prepared a statement describing the deficiencies in the archaeological element of the EIR. At the hearing copies of Supplemental Reports to the EIR were made available, and I found that URS Research Inc. had added responses to my comments and that these comments along with my critique were now included in the EIR. The responses to my comments failed to add objective information concerning archaeological values or to propose procedures for mitigating impacts. After adding the statement that I read at the meeting and my comments on URS's responses (based on a quick five minute review of the responses) and other comments on the EIR relating to non-archaeological values, the Planning Commission included all of the comments in an amended version of the report and voted approval of the EIR as complete.

In summary: 1) The Lake Anderson Development EIR virtually lacked an archaeological element, and this element was not prepared by a professional archaeologist but rather a paleontologist.

2) In the evaluation of archaeological resources, criteria which are used by archaeologists who are engaged in research involving California archaeological resources were not used; because of this the evaluation was based on ignorance of the value of the resources.

3) Prior to submission the developer deleted wording which recommended stronger mitigating measures than were acceptable to the developer.

4) I wrote a critique of the EIR draft pointing out the deficiencies of the archaeological element.

5) My critique was included in the final report along with comments added by URS which failed to add objective data, and the report was then accepted as complete.

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The logic which the Planning Commission used in deciding that the report was complete was that all of the comments made by interested parties were included in the report and it therefore provided information adequate to make planning decisions. In cases such as the Lake Anderson EIR where elements of an environmental impact study do not include objective information, the present review system used by the City of San Jose requires reviewing agencies or interested citizens to obtain this objective data at their own expense in order to make the report complete. Most of these agencies and citizens are not capable of funding the necessary research in order to acquire information concerning the archaeological resources to be affected by a development. The present review system places the responsibility for data gathering on the citizen rather than on the firm preparing EIRs. In the case of EIPs with inadequate archaeological elements, the present review system clearly fails to insure the production of a document which will allow planners to make decisions which are based on objective data.

Sincerely,

A handwritten signature in cursive script, reading "Chester King".

CHESTER KING
Coordinator of BAAC